

Judge Hellerstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 5909

IN RE WORLD TRADE CENTER SITE LITIGATION

-----X
JAMES M. TOSHACH, JR. AND DEBRA TOSHACH,

21 MC 100 (AKH)
(ECF)

SUMMONS

Plaintiffs,

08 CV _____

-against-

Jury Trial
Demanded

THE CITY OF NEW YORK, and
AMEC CONSTRUCTION MANAGEMENT, INC., *et al.*,

Defendants.

-----X
YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon:

Plaintiffs' Attorney: Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Floor
New York, New York 10271
212/732.9000

an Answer to the Complaint that is herein served upon you, within 20 days after service
of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the Complaint.

J. MICHAEL McMAHON

Clerk


By: Deputy Clerk

Date

JUN 30 2008

Date

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ORIGINAL

TO:

AMEC CONSTRUCTION
MANAGEMENT, INC. and other AMEC entities
c/o Tara Saybe
Patton Boggs LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BOVIS LEND LEASE, LMB, INC.
and other BOVIS entities
c/o Mound Cotton Wollan & Greengrass
Mark J. Weber, Esq.
One Battery Park Plaza
New York, NY 10004-1486

TULLY CONSTRUCTION CO., INC.
and other TULLY entities
c/o Tara Saybe
Patton Boggs LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TURNER CONSTRUCTION
COMPANY and other
TURNER entities
c/o London Fisher LLP
Attn: John Starling, Esq.
59 Maiden Lane
New York, NY 10038

CITY OF NEW YORK
By: Corporation Counsel
100 Church Street
New York, New York 10007

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

JAMES M. TOSHACH, JR. AND DEBRA
TOSHACH,

- against -

Plaintiffs,

THE CITY OF NEW YORK, AND AMEC
CONSTRUCTION MANAGEMENT, INC., *et al.*,

Defendants.

21 MC 100 (AKH)

DOCKET NO.

CHECK-OFF ("SHORT FORM")
COMPLAINT
RELATED TO THE
MASTER COMPLAINT

PLAINTIFF DEMANDS A TRIAL BY
JURY

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaints are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "X" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiff, by his attorneys SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO, P.C. complaining of Defendants, respectfully alleges:

I. PARTIES

PLAINTIFF(S)

1. ☒ Plaintiff JAMES M. TOSHACH, JR., (hereinafter the "Injured Plaintiff"), is an individual and a citizen of New York residing at 39 Ludlow Street, Staten Island, New York 10312.
2. Alternatively, ☐ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as of the Estate of _____.
3. ☒ Plaintiff, DEBRA TOSHACH (hereinafter the "Derivative Plaintiff"), is an individual and a citizen of New York residing at 39 Ludlow Street, Staten Island, New York 10312, and has the following relationship to the Injured Plaintiff:

X Plaintiff DEBRA TOSHACH at all relevant times herein, is and has been lawfully married to Plaintiff JAMES M. TOSHACH, and brings this derivative action for her loss due to the injuries sustained by her husband, Plaintiff JAMES M. TOSHACH.

☐ Parent ☐ Child ☐ Other: _____

4. In the period from September 11, 2001 through the end of September 2001, and thereafter, including October 2001, the injured Plaintiff worked for the New York City Fire Department as a firefighter at:

Please be as specific as possible when filling in the following dates and locations

X The World Trade Center Site

Location(s) (i.e., building, quadrant, etc.) throughout the four quadrants.

From September 11, 2001 through the end of September 2001, and October 2001. For many of these days, the Plaintiff worked 12 hour shifts. In September 2001, the Plaintiff worked multiple 24 hour shifts. The injured plaintiff last worked at the World Trade Center Site in October 2001.

☐ The New York City Medical Examiner's Office

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Fresh Kills Landfill

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Barge

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ Other:* For injured plaintiffs who worked at Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total;
Name and Address of Non-WTC Site
Building/Worksite: _____

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

X Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;

X Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;

X Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;

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☐ Other: _____

6. Injured Plaintiff

- ☒ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

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B. DEFENDANT(S)

7. The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

X THE CITY OF NEW YORK

- ☐ A Notice of Claim was timely filed and served on _____ and
☐ pursuant to General Municipal Law §50-h the CITY held a hearing on _____ (OR)
☐ The City has yet to hold a hearing as required by General Municipal Law §50-h
☐ More than thirty days have passed and the City has not adjusted the claim
 (OR)

X A Petition/application to

X deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc* (for leave to file a late Notice of Claim *Nunc Pro Tunc*) has been filed and a determination

X is pending

- ☐ Granting petition was made on _____
☐ Denying petition was made on _____

☐ PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"]

- ☐ A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The Unconsolidated Laws of the State of New York on
☐ More than sixty days have elapsed since the Notice of Claim was filed, (and)
☐ the PORT AUTHORITY has adjusted this claim
☐ the PORT AUTHORITY has not adjusted this claim.

- ☐ 1 WORLD TRADE CENTER, LLC
☐ 1 WTC HOLDINGS, LLC
☐ 2 WORLD TRADE CENTER, LLC
☐ 2 WTC HOLDINGS, LLC
☐ 4 WORLD TRADE CENTER, LLC
☐ 4 WTC HOLDINGS, LLC
☐ 5 WORLD TRADE CENTER, LLC

☐ 5 WTC HOLDINGS, LLCX AMEC CONSTRUCTION MANAGEMENT, INC.☐ 7 WORLD TRADE COMPANY, L.P.☐ A RUSSO WRECKING☐ ABM INDUSTRIES, INC.☐ ABM JANITORIAL NORTHEAST, INC.X AMEC EARTH & ENVIRONMENTAL, INC.☐ JAMES M. CORTESE SPECIALIZED HAULING, LLC, INC.☐ ATLANTIC HEYDT CORP☐ BECHTEL ASSOCIATES PROFESSIONAL CORPORATION☐ BECHTEL CONSTRUCTION, INC.☐ BECHTEL CORPORATION☐ BECHTEL ENVIRONMENTAL, INC.☐ BERKEL & COMPANY, CONTRACTORS, INC.☐ BIG APPLE WRECKING & CONSTRUCTION CORPX BOVIS LEND LEASE, INC.X BOVIS LEND LEASE LMB, INC.☐ BREEZE CARTING CORP☐ BREEZE NATIONAL, INC.☐ BRER-FOUR TRANSPORTATION CORP.☐ BURO HAPPOLD CONSULTING ENGINEERS, P.C.☐ C.B. CONTRACTING CORP☐ CANRON CONSTRUCTION CORP☐ CANTOR SEINUK GROUP☐ CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.☐ CORD CONTRACTING CO., INC☐ CRAIG TEST BORING COMPANY INC.☐ DAKOTA DEMO-TECH☐ DIAMOND POINT EXCAVATING CORP☐ DIEGO CONSTRUCTION, INC.☐ DIVERSIFIED CARTING, INC.☐ DMT ENTERPRISE, INC.☐ D'ONOFRIO GENERAL CONTRACTORS CORP☐ EAGLE LEASING & INDUSTRIAL SUPPLY

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☐ EAGLE ONE ROOFING CONTRACTORS INC.
☐ EAGLE SCAFFOLDING CO
☐ EJ DAVIES, INC.
☐ EN-TECH CORP
☐ ET ENVIRONMENTAL
☐ EVERGREEN RECYCLING OF CORONA
☐ EWELL W. FINLEY, P.C.
☐ EXECUTIVE MEDICAL SERVICES, P.C.
☐ F&G MECHANICAL, INC.
☐ FLEET TRUCKING, INC.
☐ FRANCIS A. LEE COMPANY, A CORPORATION
☐ FTI TRUCKING
☐ GILSANZ MURRAY STEFICEK, LLP
☐ GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC
☐ HALLEN WELDING SERVICE, INC.
☐ H.P. ENVIRONMENTAL
☐ KOCH SKANSKA INC.
☐ LAQUILA CONSTRUCTION INC
☐ LASTRADA GENERAL CONTRACTING CORP
☐ LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C.
☐ LIBERTY MUTUAL GROUP
☐ LOCKWOOD KESSLER & BARTLETT, INC.
☐ LUCIUS PITKIN, INC
☐ LZA TECH-DIV OF THORTON TOMASETTI
☐ MANAFORT BROTHERS, INC.
☐ MAZZOCCHI WRECKING, INC.
☐ MERIDIAN CONSTRUCTION CORP.
☐ MORETRENCH AMERICAN CORP.
☐ MRA ENGINEERING P.C.
☐ MUESER RUTLEDGE CONSULTING ENGINEERS
☐ NACIREMA INDUSTRIES INCORPORATED
☐ NEW YORK CRANE & EQUIPMENT CORP.
☐ NICHOLSON CONSTRUCTION COMPANY
☐ OLYMPIC PLUMBING & HEATING
☐ PETER SCALAMANDRE & SONS, INC.
☐ PINNACLE ENVIRONMENTAL CORP
☐ PLAZA CONSTRUCTION CORP.

☐ PLAZA CONSTRUCTION MANAGEMENT CORP.
☐ PRO SAFETY SERVICES, LLC
☐ PT & L CONTRACTING CORP
☐ REGIONAL SCAFFOLD & HOISTING CO, INC.
☐ ROBER SILMAN ASSOCIATES
☐ ROBERT L GEROSA, INC
☐ RODAR ENTERPRISES, INC.
☐ ROYAL GM INC.
☐ SAB TRUCKING INC.
☐ SAFEWAY ENVIRONMENTAL CORP
☐ SEASONS INDUSTRIAL CONTRACTING
☐ SEMCOR EQUIPMENT & MANUFACTURING CORP.
☐ SILVERITE CONTRACTORS
☐ SILVERSTEIN PROPERTIES
☐ SILVERSTEIN PROPERTIES, INC.
☐ SILVERSTEIN WTC FACILITY MANAGER, LLC
☐ SILVERSTEIN WTC, LLC
☐ SILVERSTEIN WTC MANAGEMENT CO., LLC
☐ SILVERSTEIN WTC PROPERTIES, LLC
☐ SILVERSTEIN DEVELOPMENT CORP.
☐ SILVERSTEIN WTC PROPERTIES LLC
☐ SIMPSON GUMPERTZ & HEGER INC
☐ SKIDMORE OWINGS & MERRILL LLP
☐ SURVIVAIR
☐ TISHMAN INTERIORS CORPORATION,
☐ TISHMAN SPEYER PROPERTIES,
☐ TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN
☐ TISHMAN CONSTRUCTION CORPORATION OF NEW YORK
☐ THORNTON-TOMASETTI GROUP, INC.
☐ TORRETTA TRUCKING, INC
☐ TOTAL SAFETY CONSULTING, L.L.C
☐ TUCCI EQUIPMENT RENTAL CORP
☒ TULLY CONSTRUCTION CO., INC.
☒ TULLY ENVIRONMENTAL INC.
☒ TULLY INDUSTRIES, INC.
☒ TURNER CONSTRUCTION CO.

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☒ TURNER CONSTRUCTION COMPANY
☒ TURNER CONSTRUCTION INTERNATIONAL, LLC
☐ TURNER/PLAZA, A JOINT VENTURE
☐ ULTIMATE DEMOLITIONS/CS HAULING
☐ VERIZON NEW YORK INC,
☐ VOLLMER ASSOCIATES LLP
☐ W HARRIS & SONS INC
☐ WEEKS MARINE, INC.
☐ WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.

☐ ZIEGE
☐ OTHER:

☐ WHITNEY CONTRACTING INC.
☐ WOLKOW-BRAKER ROOFING CORP
☐ WORLD TRADE CENTER PROPERTIES, LLC
☐ WSP CANTOR SEINUK
☐ YANNUZZI & SONS INC
☐ YONKERS CONTRACTING COMPANY, INC.
☐ YORK HUNTER CONSTRUCTION, LLC

☐ Non-WTC Site Building Owner

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Lessee

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Building Managing Agent

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

II. JURISDICTION

8. The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically, ☒ Air Transport Safety & System Stabilization Act of 2001.

III. CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240	<input checked="" type="checkbox"/>	Common Law Negligence, including allegations of Fraud and Misrepresentation
<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6)	<input checked="" type="checkbox"/>	Air Quality;
		<input checked="" type="checkbox"/>	Effectiveness of Mask Provided;
		<input checked="" type="checkbox"/>	Effectiveness of Other Safety Equipment Provided

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<input checked="" type="checkbox"/>	Pursuant to New York General Municipal Law §205-a		(specify: _____); <input type="checkbox"/> Other(specify):
<input type="checkbox"/>	Pursuant to New York General Municipal Law §205-e	<input type="checkbox"/>	Wrongful Death
		<input checked="" type="checkbox"/>	Loss of Services/Loss of Consortium for Derivative Plaintiff
		<input type="checkbox"/>	Other: _____

IV CAUSATION, INJURY AND DAMAGE

9. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

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X**Cancer Injury: Bladder Cancer**

Date of onset: In or around May 2007, Injured plaintiff found blood in his urine, and became alarmed. Injured plaintiff went to the emergency room at Staten Island University Hospital South, where physicians gave him blood and urine tests. The doctors, believing Injured plaintiff had a urinary tract infection, gave him a prescription for antibiotics and sent him home. Suspecting that there may be an alternate cause for the blood in his urine, Injured plaintiff consulted with his primary care physician, Dr. Theodore Strange. Dr. Strange referred Injured plaintiff to urologist Dr. Joel Sherman. On May 9, 2007, Dr. Sherman administered, among other tests, a cystourethroscopy on Injured plaintiff, and thereupon diagnosed bladder cancer. Dr. Sherman recommended that Injured plaintiff undergo further testing.

On May 11, 2007, Injured plaintiff underwent a cystoscopy, biopsy, and fulguration, the results of which led Dr. Sherman to confirm the diagnosis of bladder cancer. The results were further confirmed by James Bruno, M.D. in a pre-operative evaluation. On May 24, 2007, Injured plaintiff underwent a transurethral resection of the bladder tumor at Staten Island University Hospital South. "The pathology revealed low grade, superficial urothelial cell carcinoma of the urinary bladder.... NEWLY DIAGNOSED BLADDER CARCINOMA." On September 4, 2007, Injured plaintiff returned to Dr. Sherman, who found "bladder CA; recurrence..." and that "papillary lesions were noted at the prostrate and an erythematous lesion at the right bladder lat wall. All suspicious tissue was then fulgurated with electrocautery." On December 5, 2007, Injured plaintiff returned to Dr. Sherman, who found "bladder CA; recurrence..." and that "a

☐**Cardiovascular Injury:**

Date of onset: _____
Date physician first connected this injury to WTC work: _____

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	<p>papillary tumor was noted at the right trigone. All remaining suspicious tissue was then fulgurated with electrocautery...." Injured plaintiff was unaware of the severity of his symptoms until well after their onset, and only upon learning of the diagnoses.</p> <p>To date Injured plaintiff's doctors have diagnosed Injured plaintiff with bladder cancer, and other injuries, the full extent of which has not yet been determined.</p> <p style="text-align: center;">I</p> <p>Date physician first connected this injury to WTC work: May 2007</p>		
<input type="checkbox"/>	<p>Respiratory Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____</p>	<input type="checkbox"/>	<p>Fear of Cancer Date of onset: _____ Date physician first connected this injury to WTC work: _____</p>
<input type="checkbox"/>	<p>Digestive Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____</p>	<input type="checkbox"/>	<p>Other Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____</p>

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

10. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

<p><input checked="" type="checkbox"/> Pain and suffering</p> <p><input checked="" type="checkbox"/> Loss of the enjoyment of life</p> <p><input checked="" type="checkbox"/> Loss of earnings and/or impairment of earning capacity</p> <p><input checked="" type="checkbox"/> Loss of retirement benefits/diminution of retirement benefits</p>	<p><input checked="" type="checkbox"/> Expenses for medical care, treatment, and rehabilitation</p> <p><input checked="" type="checkbox"/> Other:</p> <p><input checked="" type="checkbox"/> Mental anguish</p> <p><input checked="" type="checkbox"/> Disability</p> <p><input type="checkbox"/> Medical monitoring</p> <p><input type="checkbox"/> Other: _____</p>
---	---

11. As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

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WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.


Plaintiffs demand that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
June 26, 2008

Yours, etc.

SULLIVAN PAPAIN BLOCK
MCGRATH & CANNAVO P.C.
Attorneys for Plaintiff

BY:



Andrew J. Carboy (AC 2147)

120 Broadway - 18th Floor
New York, New York 10271
Tel: (212) 732-9000

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